

TAX HIGHLIGHTS



OPOREZIVANJE ANGAŽMANA DIREKTORA KOJI NE PRIMA NAKNADU PO OSNOVU UGOVORA O PRAVIMA I OBAVEZAMA DIREKTORA BEZ ZASNIVANJA RADNOG ODNOSA 2

TAXATION OF ENGAGEMENT OF A DIRECTOR WHO DOES NOT RECEIVE REMUNERATION BASED ON A CONTRACT ON MUTUAL RIGHTS AND OBLIGATIONS OF A DIRECTOR WITHOUT ESTABLISHING AN EMPLOYMENT RELATIONSHIP 2

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Ministarstvo finansija je donelo Mišljenje broj 011-00-1137/2018-04 od 11.6.2018. godine koje se odnosi na utvrđivanje poreskog tretmana angažmana direktora (koji nije osnivač niti član društva), koji ima zaključen ugovor o pravima i obavezama bez zasnivanja radnog odnosa po kom osnovu ne prima naknadu. Navedeno Mišljenje se nadovezuje na Mišljenje koje je prethodno donelo Ministarstvo za rad, zapošljavanje, boračka i socijalna pitanja broj 011-00-406/2018-02 od 24. maja 2018. godine.

Mišljenjem je precizirano da:

- shodno Zakonu o radu direktor koji obavlja poslove po osnovu ugovora kojim se ne zasniva radni odnos ima **pravo na naknadu za rad**;
- **naknada za rad je obavezan deo ugovora o međusobnim pravima, obavezama i odgovornostima direktora koji nije zasnovao radni odnos**;
- **niko se ne može odreći prava na pravičnu naknadu za rad.**
- Posledično, za direktora angažovanog po osnovu ugovora o pravima i obavezama direktora, bez zasnivanja radnog odnosa u tom privrednom društvu, **postoji obaveza obračunavanja i plaćanja poreza na dohodak građana na drugi prihod (po stopi od 20%) i pripadajućih doprinosa za obavezno socijalno osiguranje (PIO po stopi od 26% i zdravstvo po stopi od 10.3% ukoliko nije osiguran po drugom osnovu) po osnovu ugovorene naknade za rad.**
- **Osnovica za obračun poreza na druge prihode i doprinosa za obavezno socijalno osiguranje je ugovorena naknada i u situaciji kad se direktor odrekne ugovorene naknade za rad.**

TAXATION OF ENGAGEMENT OF A DIRECTOR WHO DOES NOT RECEIVE REMUNERATION BASED ON A CONTRACT ON MUTUAL RIGHTS AND OBLIGATIONS OF A DIRECTOR WITHOUT ESTABLISHING AN EMPLOYMENT RELATIONSHIP

The Ministry of Finance has issued Opinion number 011-00-1137 / 2018-04 of June 11, 2018, which refers to determining the tax treatment of the engagement of the director (who is not the founder or a member of the company), who has concluded a contract of rights and obligations without establishing an employment relationship on what basis he does not receive compensation. The above Opinion relates to the Opinion previously issued by the Ministry of Labor, Employment, Veterans' Affairs and Social Issues No. 011-00-406 / 2018-02 of 24 May 2018.

The Opinion prescribes that:

- Pursuant to Labour Law, director who has not established an employment relationship **is entitled to remuneration for his work**;
- **the remuneration is to be deemed an obligatory element of the contract on mutual rights, obligations and duties of the director who has not established an employment relationship**;
- **no person can renounce the right to equitable remuneration for work**;
- **Consequently, for the director engaged on the basis of a contract on the rights and obligations of the director, without establishing an employment relationship in that company, there is an obligation to calculate and pay personal income tax on other income (at the rate of 20%) and the corresponding mandatory social security contributions (pension and disability insurance at a rate of 26% and health care insurance at a rate of 10.3% if it is not insured on another basis) on the basis of contracted remuneration.**
- **The basis for calculating the tax on other income and social security contributions is a contracted remuneration including a situation when the director renounces the contracted remuneration.**

Iz navedenog stava Ministarstava proizlazi da je potrebno obračunati porez i doprinose u situaciji u kojoj nema isplate prihoda odnosno naknade direktoru.

Navedni stav je u suprotnosti sa odredbama Zakona o porezu na dohodak građana. Naime, navedenim Zakonom je propisano da se porez po odbitku, za svakog obveznika i za svaki pojedinačno isplaćeni prihod, **obračunava, obustavlja i uplaćuje u momentu isplate prihoda.**

Kako u slučaju u kojem direktor ne prima naknadu za rad ne dolazi do isplate prihoda, smatramo da ne postoji osnov za obračun poreza.

Pitanje utvrđivanja visine naknade za rad je predmet uređenja međusobnih odnosa direktora i nadležnog organa kod poslodavca i definisano je drugim propisom, konkretno, Zakonom o radu.

Nadalje, budući da ne postoji propisani minimum za utvrđivanje ugovorene naknade za rad direktora, moglo bi se protumačiti da bi ugovaranje naknade u simboličnom iznosu bilo prihvatljivo.

From the stated Ministry's position it can be concluded that it is necessary to calculate tax and contributions in a situation in which there is no payment of income or compensation to the director.

The aforementioned position is contrary to the provisions of the Personal Income Tax Law. Namely, the aforementioned Law prescribes that the **withholding tax**, for each taxpayer and for each individually paid income, is **calculated, suspended and paid at the moment of payment of income.**

Since in the case where the director does not receive remuneration for work, there is no payment of income, we consider that there is no basis for calculation of tax.

The issue of determining amount of remuneration for work is the subject of mutual relations between director and competent authority of the employer and are regulated by other legislature, specifically Labor Law.

Furthermore, having in mind that there is no prescribed minimum for determining the contracted remuneration for the work of the director, it could be interpreted that contracting a remuneration in a symbolic amount would be acceptable.



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